

In the Court of Appeals of the State of Alaska

Alaska Dental Arts, LLC,
Applicant,

v.

Superior Court,
Respondent.

Court of Appeals No. **A-13816**

Order
Original Application

Date of Order: **12/6/21**

Trial Court Case Nos. **3AN-17-02990/2991/2992CR**

Before: Wollenberg, Harbison, and Terrell, Judges.

After a bench trial, Seth Albert Lookhart was convicted of multiple counts of defrauding the State of Alaska Medicaid program and embezzling from Alaska Dental Arts, LLC. The superior court subsequently ordered Lookhart to pay restitution to the State of Alaska Department of Health and Social Services (DHSS) and Alaska Dental Arts. As part of its restitution order, the court directed that funds in Lookhart's accounts at Columbia Bank¹ — funds that were frozen after the court issued search warrants regarding them — be released to DHSS as funds stolen from Medicaid.

Alaska Dental Arts filed an original application in this Court, challenging the portion of the trial court's order releasing the frozen funds in Lookhart's accounts to DHSS. Alaska Dental Arts argues that doing so contravened the priority of restitution payments set out in Alaska Criminal Rule 32.6(g)(3)(B).

Both DHSS and Lookhart have filed oppositions.

¹ Columbia Bank is the successor-in-interest to Pacific Continental Bank.

DHSS contends that Alaska Dental Arts has no interest in the frozen funds. First, DHSS notes that the warrants directing Lookhart's accounts to be frozen do not reference any crimes against Alaska Dental Arts. Second, DHSS asserts that any dispute about the priority of payments has been rendered moot by an intervening settlement agreement.

According to DHSS, Columbia Bank obtained a civil judgment against Lookhart regarding a defaulted loan before the superior court entered the restitution order in his criminal case. Afterward, DHSS and the bank disagreed over whether the frozen funds belonged to DHSS or whether they were assets that could be used to satisfy the bank's civil judgment. But DHSS and the bank eventually settled their dispute. (DHSS has not provided a copy of the settlement agreement to this Court.) Because the bank's judgment was first in time, and DHSS has independently resolved its dispute with the bank about the frozen funds, DHSS argues that there is no longer dispute for this Court to resolve. DHSS further suggests that any controversy regarding the proper interpretation of Alaska Criminal Rule 32.6(g)(3)(B) will not become ripe until Lookhart satisfies his obligations to the bank.

For his part, Lookhart asks this Court to stay consideration of this original application pending the resolution of the direct appeal of in his criminal case. (He notes that he moved in the superior court to stay execution of the restitution order; as of the filing of his response to the original application, that motion apparently remained pending.) Lookhart also argues that the superior court lacked the authority to dispose of the frozen funds, since the warrants freezing the funds did not authorize the State to seize them. Lookhart nonetheless acknowledges that the order of restitution is a civil

judgment, and that Alaska Dental Arts and DHSS may seek to attach the funds to satisfy that judgment.

The State takes no position on whether Alaska Dental Arts or DHSS has priority over the frozen funds. (The court system declined to file a response.)

We asked the parties to respond to Lookhart's request for a stay, and Alaska Dental Arts, DHSS, and the State each notified us of their opposition to a stay. In addition, Alaska Dental Arts and the State argue that the superior court's authority to dispose of the frozen funds is not at issue in this original application, and that if Lookhart wishes to challenge the superior court's order on that basis, he must do so in his direct appeal and establish that he preserved the issue. DHSS, meanwhile, argues that even if Lookhart prevails in his direct appeal and some or all of his convictions are reversed, he has no ongoing interest in the funds because of his preexisting debt to the bank.

Upon consideration of the parties' pleadings, we GRANT Alaska Dental Arts's original application and order full briefing of the issues raised. To this Court's knowledge, the superior court's order disposing of the frozen funds has not been stayed. Unless and until this order is stayed, we will proceed with this application.

Accordingly, IT IS ORDERED:

1. The original application is GRANTED.

2. *Transcripts.* Within 10 days, the Applicant, Alaska Dental Arts, LLC, may designate a transcript pursuant to Alaska Appellate Rule 210(b). Within 10 days following the Applicant's designation, if any, the Respondents may designate additional portions of the proceedings to be transcribed.

3. *Trial Court File.* The Appellate Court Records Office shall prepare and distribute the record within 40 days.

4. *Briefing.* Following the certification of the transcript and record, the Applicant, Alaska Dental Arts, LLC, shall have 45 days to file an opening brief conforming to Appellate Rule 212. Upon the filing of the Applicant's brief, the Respondents shall each have 45 days to file a brief, or a notice that the Respondent does not intend to file a brief. (The court system need not file an additional notice of non-participation.) The Applicant shall then have 20 days to file any reply brief. This order is exempt from Standing Order No. 12; any requests for an extension of time to file a brief will be governed by Appellate Rule 503.5.

5. *Oral Argument.* Any party may request oral argument under Appellate Rule 505(a)(3).

6. In connection with the issues raised in the original application, and in addition to any other arguments the parties may make, the parties are directed to address the following issues:

(a) As a threshold matter, the parties shall address whether this application is moot. In particular, the parties shall address the following questions:

(i) DHSS asserts that Columbia Bank has priority over the frozen funds because its civil judgment against Lookhart predates the restitution order. But DHSS provides little legal and factual support for this claim. Do all the parties agree, and what is the authority for this proposition? In other words, what rules regarding priority of judgment creditors govern?

(ii) DHSS also asserts that it has reached a settlement agreement with the bank, rendering this application moot. Is there any reason why this Court cannot order DHSS to provide a copy of the settlement agreement to the Court?

(b) Under what authority were the funds frozen, and what party has legal possession of the funds?

(i) In its opposition to the State's motion regarding the disposition of the frozen bank accounts, dated February 24, 2020, Columbia Bank asserted that it had voluntarily placed an administrative hold on the accounts following the issuance of the search warrants in March 2017 and that, "out of respect for [the] Court and the on-going criminal proceedings," it had not previously applied the funds to satisfy its own judgment against Lookhart. The bank asserted, however, that it retained possession and control of the funds since the State had never seized them under judicial authority — and that the accounts therefore remained subject to the bank's right of setoff. Under what authority and by what means were the funds frozen? If the funds were frozen pursuant to the warrants, did the warrants authorize the police to seize the funds, and are those funds now considered forfeited, or were the funds simply frozen for evidentiary purposes? Does Alaska Dental Arts, LLC have an automatic right or interest in the funds as a result of the search warrants?

(ii) Do the statutes governing the disposition of property by law enforcement (AS 12.36.010 – 12.36.090) provide any guidance in resolving this dispute?

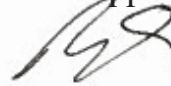
(c) To the extent Lookhart elects to challenge, in this original application litigation, the superior court's authority to order disposition of the frozen funds, he shall address his authority to do so and whether he adequately preserved this issue in the trial court.

7. Alaska Dental Arts, LLC, shall immediately notify the Court if it concludes that this application is moot.

8. If and when the superior court rules on Lookhart's motion to stay the restitution order, Lookhart may renew his request to stay the proceedings on this application.

Entered at the direction of the Court.

Clerk of the Appellate Courts



Ryan Montgomery-Sythe,
Chief Deputy Clerk

cc: Court of Appeals Judges
Judge Wolverton
Trial Court Clerk - Anchorage

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